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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 563

VALENTINE & SONS, A COPARTNERSHIP, A. L. RUSO &  
CO., GEORGE COPRIVIZA & SON, COX & WAUGA-  
MAN, PAPAC-NIRICH COMPANY AND MATIASSE-  
VICH BROS.,

*Petitioners*

*vs.*

CHESTER BOWLES, PRICE ADMINISTRATOR

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES EMERGENCY COURT OF AP-  
PEALS AND BRIEF IN SUPPORT THEREOF.

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CAREY VAN FLEET,  
EMMETT R. BURNS,  
*Counsel for Petitioners.*



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CO., GEORGE COPRIVIZA & SON, COX & WAUGA-  
MAN, PAPAC-NIRICH COMPANY AND MATIASE-  
VICH BROS.,  
*Petitioners*

*vs.*

CHESTER BOWLES, PRICE ADMINISTRATOR

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**PETITION FOR WRIT OF CERTIORARI**

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*To the Honorable the Supreme Court of the United States:*

The petition of Valentine & Sons, A. L. Russo & Co., George Copriviza & Son, Cox & Waugaman, Papac-Nirich Company and Matiasevich Bros. respectfully shows:

That the United States Emergency Court of Appeals is now and has been at all of the times hereinafter mentioned an inferior tribunal created by an Act of Congress on May 12, 1942, for the purpose of hearing and determining appeals from rulings made under the Emergency Price Control Act of 1942, which act creating and setting forth the

powers of the United States Emergency Court of Appeals is fully set forth in Volume 50 U. S. C. A., 1943 Supplement, pages 330 to 341, inclusive; that thereafter and on or about April 1, 1943 (said order being known as Order No. 10), the Office of Price Administrator issued an order establishing the price for services of dehydrating apples in the State of California; that said order was retroactive, confiscatory and unconstitutional and exceeded the jurisdiction and powers of the said Administrator as set forth by Congress; that thereafter the appellants as joint complainants, consisting of six in number, all with their place of business at Watsonville, California, filed an application complaining of the said order and the rate thereby established, complaining that the said price set forth in the said order, to-wit, \$110 per dried ton for C-grade apples or better, was confiscatory and that it did not allow an adequate return for the services or the capital invested. On appeal to the United States Emergency Court of Appeals, petitioners raised the following objections to the said order and Emergency Price Control Act, to-wit:

(a) The OPA acted in violation of authority as set forth by Congress;

(b) The OPA had no jurisdiction over the subject matter, the complainants, the industry, the product, or the area involved herein;

(c) The jurisdiction over the subject matter, the person, the industry and the area involved herein rested with the War Production Board and the War Food Administration and was so conducted by these Boards;

(d) The OPA in attempting to regulate the industry usurped the powers of the War Production Board and the War Food Administration, and therefore its actions were illegal and unconstitutional;

(e) The action of the OPA was unconstitutional;

(f) The action of the OPA was confiscatory;

(g) The action of the OPA is admittedly based upon incomplete review of the price structure of the industry without notice, hearing or consultation as required by the Emergency Price Control Act;

(h) The regulation made by the OPA setting the price at \$110 per dried ton is in direct conflict with the actual facts in refusing to allow a return on interest, capital investment or upon the labor of one who employs another;

(i) The said order setting the price at \$110 not only refuses a return on capital investment, or a profit, but is actually confiscatory in that it refuses even the actual expenditures; that the action of the OPA in this instance was lacking in due process of law in violation of the fifth amendment to the Constitution of the United States;

(j) That the theory upon which the OPA has acted in this instance is a theory contrary to the guarantees expressed in the Constitution of the United States; that the said theory employed by the OPA disregards actual costs and states that it is proper for it to distribute the money of one person to another stranger without the consent of the person affected—in this instance the complainants, and without notice, hearing or consultation.

(k) That the said order of the OPA is in direct violation of the express contracts and impaired the obligation of the contracts.

(l) That the action of the OPA in its ruling of March 27, 1944, disregarding the Cox & Waugaman dryer's charges and the Papac-Nirich charges, is confiscatory and unconstitutional; that the said price is admittedly based on a refusal to regard repairs and maintenance of the plants of complainants and is unconstitutional;

(m) That the said price as established by the OPA was not based on that of a competitive dryer of the complainants and that the said OPA had no power by

regulation over the complainants on their services in this section.

That the said Price Administrator exceeded his jurisdiction in the exercise of establishing a price; that thereafter on the 26th day of September, 1945, the United States Emergency Court of Appeals rendered an opinion sustaining the said Price Control Act and the action of the Price Administrator; that the said court exceeded its jurisdiction in the exercise of a judicial function; that this court has jurisdiction by virtue of the Act of January 30, 1942, c. 26, Title II, section 204, 56 Stat. 31, found in 1943 Supplement to Title 50 U. S. C. A., section 924d, page 327.

Your petitioners have no other adequate or speedy means of remedy other than this writ of certiorari, as provided for under the Emergency Price Control Act of 1942 and that your petitioners rely upon each and every aforementioned points heretofore set forth above (a) to (m).

WHEREFORE, your petitioners pray that the writ of certiorari may issue out of this court to the said United States Emergency Court of Appeals, to Chief Judge Maris and Magruder and McAllister, Judges, and to Chester Powles, Price Administrator, commanding them to certify and return to this court certain proceedings had before the said court as follows:

A full and complete certified copy of the proceedings heretofore conducted before the said United States Emergency Court of Appeals for the purpose of review, and that thereupon this court review and annul the decision of the United States Emergency Court of Appeals, and for such other, further and different relief as may be meet and just in the premises.

CAREY VAN FLEET,  
EMMETT R. BURNS,

*Counsel for Petitioners.*

